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The Honorable Robert Gosselin
Chair, Employment Relations, Training and Safety Committee
N0890 House Office Building
P.O. Box 30014
Lansing, MI 48909-7514

Dear Representative Gosselin:

I am writing on behalf of the National Association of Professional Employer Organizations (NAPEO)[1] to offer strong support for the passage by the Employment Relations, Training and Safety Committee of SB 171 through 174, commonly referred to as the anti-SUTA dumping legislation. This package of bills would prohibit a tax avoidance practice engaged in by some employers to manipulate their unemployment tax liabilities. This practice compromises the unemployment system and shifts substantial costs to employers who do not engage in SUTA dumping.

NAPEO intended to participate in tomorrow's Committee meeting to voice support for SB 171 through 174. Regrettably, due to scheduling conflicts, we are unable to attend the meeting. We welcome the opportunity to address the Committee if the bill in not voted out at tomorrow's meeting.

NAPEO has historically supported broad-based efforts to preserve the integrity of the unemployment system and it urges you to pass without delay SB 171-174 which conforms to the federal requirements.

NAPEO participated over the last several months in meetings with the Michigan Unemployment Agency and key business groups in an effort to develop anti-SUTA dumping legislation that puts an end to this tax avoidance practice while not placing onerous requirements on businesses or singling out particular industries. Enactment of SB 171 through 174 would accomplish this important goal.

[1] The National Association of Professional Employer Organizations (NAPEO) is a national trade association of the professional employer organization (PEO) industry, representing a membership that generates more than 70% of the industry's total PEO gross revenues. PEOs enable their clients to cost-effectively outsource the management of human resources, employee benefits, payroll and workers compensation so that PEO clients can focus on their core competencies to maintain and grow their bottom line

Unfortunately, the Agency and some interest groups have advocated broadening the anti-SUTA dumping effort to include issues that are outside of the scope of the Federal Act. These issues have included the addition of a provision requiring professional employer organizations to change the manner in which they report unemployment experience of client companies.

The PEO provision would place an onerous regulatory burden on the PEO industry absent any credible data suggesting such a requirement is warranted. NAPEO urges the Committee to reject any amendment singling out the PEO industry.

As you know, SB 171 through 174 is consistent with the US Department of Labor issued SUTA dumping guidance that states do not need to enact PEO specific provisions. The guidance specifically states in question 11 of the Q and A document that a state need not change the manner in which it currently requires a PEO to reporting of unemployment tax liability.

NAPEO welcomes the opportunity to discuss with the Committee a comprehensive approach to the regulation of the PEO industry. It was clear through testimony on SUTA dumping in the Senate that wide disagreement exists regarding the actual size of the PEO industry in Michigan. A PEO statute in Michigan would allow regulators to gain a full understanding of the number and types (i.e. captive, public) of PEOs operating in the State. Such basic information would be useful in crafting effective public policy impacting PEOs.

NAPEO appreciates your leadership on this important issue and we welcome the opportunity testify before your Committee. Please do not hesitate to contact me if you have any questions or if I could be of any assistance whatsoever.

Respectfully,

Tim Tucker
Asst. Director, Government Affairs

Cc: The Honorable Jason Allen
Greg Packer, Association of Michigan Professional Employer Organizations

ATTACHMENT I

# DETAILED EXPLANATION OF SECTION 303(k), SSA QUESTIONS AND ANSWERS

## IN GENERAL

**1. Question:** How do the SUTA dumping amendments affect the federal-state UC program?

**Answer:** States must assure their UC laws provide for the following:

- **Mandatory Transfers.** Unemployment experience must be transferred whenever there is substantially common ownership, management or control of two employers, and one of these employers transfers its trade or business (including its workforce), or a portion thereof, to the other employer. This requirement applies to both total and partial transfers of business.
- **Prohibited Transfers.** Unemployment experience may not be transferred, and a new employer rate (or the state's standard rate) will instead be assigned, when a person who is not an employer acquires the trade or business of an existing employer. This prohibition applies only if the UC agency finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.
- **Penalties for SUTA Dumping.** "Meaningful" civil and criminal penalties must be imposed on persons "knowingly" violating or *attempting to violate* the two requirements discussed above. These penalties must also be applicable to any person (including the person's employer) who knowingly gives advice leading to such a violation.
- **Procedures.** Procedures for identifying SUTA dumping must be established. The exact procedures do not need to be specified in state law, but state law must specifically provide for the establishment of such procedures.

These are the minimum requirements which all state laws must meet. States may provide for more stringent provisions, provided they are otherwise consistent with Federal UC law. For example, instead of requiring a partial transfer of experience only when there is common ownership, management or control, a state may require transfers of experience whenever a partial transfer of trade or business occurs.

**2. Question:** Do the SUTA dumping amendments require my state to completely overhaul its provisions relating to transfers of experience?

**Answer.** No. The amendments do not change the way states handle transfers except as discussed in the preceding Q&A. As a result, a state may leave its current provisions intact while amending its law to provide that any state law provisions implementing Section 303(k), SSA, override these other provisions. The draft legislative language attached to this UIPL takes this approach.

## MANDATORY TRANSFERS – SECTION 303(k)(1)(A), SSA

**3. Question:** Under what conditions must experience be transferred?

**Answer:** Unemployment experience must be transferred whenever there is substantially common ownership, management or control of two employers, and one of these employers transfers its trade or business, or a portion thereof, to the other employer. Thus, this requirement applies to both total and partial transfers.

**4. Question:** Provide an example of when experience must be transferred under the amendments.

**Answer:** Corporation A is assigned the state's maximum UC contribution rate of 5.4%. It establishes a shell corporation that is treated as a separate employer for UC purposes. The shell eventually qualifies for the state's minimum UC contribution rate of .5%. (How the new entity obtains this rate may vary depending on how it was established and on the state's UC law. It may, for example, simply wait out a new employer period. If state law permits, it may use voluntary contributions to "buy down" to the minimum rate.) Corporation A then transfers all or some of its workforce to that shell. The result, absent the amendments, would be that, even though Corporation A controls the shell and its operations, it escapes a rate of 5.4% on the transferred workforce and instead pays at a rate of .5%.

Under the amendments, if the workforce is transferred to the shell, then the unemployment experience attributable to the transferred workforce must also be transferred to the shell. The shell's experience would be recomputed based on its experience as well as the experience transferred from Corporation A. Assuming a total transfer of workforce and experience to the shell, the shell might even continue to receive the maximum rate of 5.4%.

It does not matter whether the employer transfers all or some of its trade or business to the shell. Experience commensurate with the trade or business transferred must be transferred to the shell.

**5. Question:** Why is the employer's workforce part of the employer's "trade or business," and thus subject to the SUTA dumping amendments?

**Answer:** The employer's workforce is necessarily a part of its business and is the means by which an employer effectuates its trade or business. Without a workforce, there would be neither trade nor business. Thus, when some or all of the workforce is transferred, the employer no longer has the means of performing its trade or business with respect to the transferred workforce.

As noted elsewhere in this UIPL, the best-known means of SUTA dumping is the manipulation of an employer's workforce/payroll. Senate Majority Leader Frist specifically addressed this manipulation on the floor of the Senate when he stated that the amendment "prohibits shifting employees into shell companies..." (150 Cong. Rec. S8804 (daily ed. July 22, 2004).) The mandatory transfer provisions of the SUTA dumping amendments would have little, if any, effect if the workforce/payroll were not considered to be part of the employer's trade or business.

**6. Question:** How does a state determine if there is "substantially" common ownership, management, or control of two employers?

**Answer:** The state must examine the facts of each case using reasonable factors. Among other things, the state would consider the extent of commonality or similarity of: ownership; any familial relationships; principals or corporate officers; organizational structure; day-to-day operations; assets and liabilities; and stated business purposes. The Department is not at this time establishing a bright line test of what constitutes "substantially" common ownership, management, or control.

Nothing prohibits a state from exceeding the minimum Federal requirement by lowering this threshold test to "any" common ownership, management or control. This will meet the Federal law requirement as it will include all cases where "substantially common ownership, management or control" exists.

**7. Question:** When is the transfer of trade or business effective?

**Answer:** When an acquisition of trade or business is concluded is usually determined by examining the legal documents related to any purchase or acquisition of the trade or business. However, in SUTA dumping cases among businesses with common ownership, management, or control, such an acquisition will generally not take place. Instead, there may simply be a different entity issuing the paychecks. That a different entity is issuing paychecks is both an indication of the transfer of the workforce and the effective date of the transfer of the workforce.

**8. Question:** Following the mandatory transfer of experience, when must states reassign the employers' rates?

**Answer:** Although the amendments require that the experience be combined, it does not specify when revised rates must be reassigned. As a result, states may either (1) assign revised rates for the predecessor and successor employers immediately upon completion of the transfer of trade or business, or (2) assign revised rates for the predecessor and successor the next time the state calculates rates for all employers.

For purposes of implementing this new mandatory transfer, the Department strongly recommends that states reassign rates immediately upon completion of the transfer. If rates are not reassigned until a later date, it is possible that a successful "SUTA dump" will be achieved during the period between the completion of the transfer and the assignment of a new rate. For example, if an employer with a rate of 5.4% transfers 1,000 employees into a shell with a rate of .1% on the first day of the rate year, the employer will have accomplished a "SUTA" dump for that rate year.

**9. Question:** An employee of one legal entity is moved to another legal entity. Although each entity is treated as a separate employer for UC purposes, there is substantially common control over the two entities. Does this mean that unemployment experience must be transferred?

**Answer:** No. When a single person is moved from one entity to another, it is merely a transfer of an individual rather than a transfer of trade or business.

**10. Question:** A state's UC law provides that any corporate shell or spin-offs where there is "a continuity of control of the business enterprise" will not be treated as a new employer for UC purposes, but instead as the same employer. Does this constitute an acceptable alternative to the mandatory transfer requirement?

**Answer:** While this provision prohibits many (if not most) SUTA dumps, it will not necessarily address all situations where there are cases of "substantially common *ownership, management*, or control." (Emphasis added.) There may, for example, be cases where substantially common ownership exists, but that ownership does not exert a controlling interest. (For example, it is possible that a majority owner of two corporations could have non-voting stock.) This situation would require a transfer of experience under Section 303(k), SSA, even if "substantially common control" did not exist.

States with such "continuity" provisions will meet the requirements of Section 303(k)(1)(A), SSA, concerning mandatory transfers if they amend their provisions to be as specific as the Federal requirement. That is, the "continuity" provision may be amended to provide that there is no new employer where there is "substantially common ownership, management, or control."

Instead of providing for amendments addressing the mandatory transfer of experience, states may wish to amend their laws to provide for a "continuity" provision. A "continuity" provision may be easier to administer because, if all entities with substantially common ownership, management and control are always treated as being a single employer under the state UC law, the issue of transfers of experience would not arise. An example of such a law is California's, which was quoted in UIPL 34-02. (Note that California's law is limited to continuity of control, and thus, does not currently meet the Federal requirement.) The penalties described below would need to apply to violations and attempted violations of any "continuity" provision.

**11. Question:** How are professional employer organizations (PEOs) affected by the new mandatory transfer requirement?

**Answer:** The same rules apply to PEOs as any other employer. If a PEO sets up a shell corporation and transfers some or all of its trade or business to the shell, then the unemployment experience associated with the transferred trade or business must be transferred to the shell. Similarly, if the conditions prohibiting transfers of experience are met, as discussed in Questions and Answers 16-18, they would apply to PEOs.

Except for these mandatory/prohibited transfers, the amendments do not otherwise affect the relationship between the PEO and its clients. States currently vary in their treatment of PEOs and their clients for experience rating purposes. Some states treat the client as the employer for experience rating purposes and others treat the PEO as the employer for these purposes. The amendments do not require states to change this treatment.

**12. Question:** A PEO sets up several different shells. Each year it shifts all its clients to a different shell. For example, in the first year the client contracts with Shell A; in the second, it contracts with Shell B; and in the third it contracts with Shell C. When this occurs, must experience be transferred from Shell A to Shell B and then to Shell C?

**Answer:** Yes. By dictating that the client must sign with a particular shell (or otherwise manipulating which shell the client signs with), the PEO is effectively transferring its trade/business – that is, the trade/business of performing services as a PEO for a client - from Shell A to Shell B and then to Shell C. The control exercised by the PEO over which shell is the contracting entity meets the test of "substantial control." Since a transfer of trade/business has occurred and substantial commonality of control exists, experience must be transferred.

**13. Question:** May my state limit the mandatory transfer provision to large transfers of experience, such as those where 300 or more employees are transferred?

**Answer:** No. The SUTA dumping amendments apply to all transfers, large and small, where there is substantially common ownership, management or control.

**14. Question:** Current state law requires partial transfers of experience only when an "identifiable and segregable" component of an employer has been transferred to another employer. Is this an acceptable limitation on partial transfers?

**Answer:** No. States must transfer experience whenever "a part" of an existing business is transferred.

The bill that eventually became P.L. 108-295 was H.R. 3463. As introduced, H.R. 3463 required transfers of experience only when there was a transfer of an "identifiable and segregable" component of the employer. That language was deleted after the Department alerted Congressional staff of concerns that it would create a loophole allowing SUTA dumping. Thus, states must transfer experience whenever "a part" of an existing business is transferred.

For example, larger businesses are often divided into separate legal entities. Under the "identifiable and segregable" test as commonly applied under many current state UC laws, a transfer of experience would be mandated only if *all* of the trade and business of one legal entity is acquired by another legal entity. Conversely, if only a part of the entity is acquired by another entity, then no "identifiable and segregable" component could be identified and no transfer of experience would be required. As a result, the limitation relating to an "identifiable and segregable" component could easily be circumvented through transferring the majority of employees from one entity into a shell that had earned the state's minimum tax rate.

**15. Question:** How is experience transferred when no identifiable and segregable component of a business can be identified? For example, Business A sets up a shell. Business A then transfers 90% of its workforce to the shell.

**Answer:** States may prorate the payroll of the employees transferred against benefit charges/reserve balance/benefit wages, whichever is appropriate. In determining the payroll transferred, the state may use either taxable or total payroll, but it must be the payroll immediately prior to the transfer of workforce.

Thus, assuming a state uses total payroll, if 90% of Business A's total payroll was transferred to the shell, 90% of the experience attributable to Business A (that is, benefit charges, reserve balance, or benefit wages, or payroll, whichever is appropriate) must be transferred to the shell. This method is acceptable only when no identifiable and segregable component can be identified.

It should be noted that, in this case, a "continuity" provision, as discussed in Question and Answer # 10, would hold that the shell is not a separate employer. As a result, the issue of a transfer of experience would not arise.

## PROHIBITED TRANSFERS – SECTION 303(k)(1)(B), SSA

**16. Question:** Under what conditions are states prohibited from transferring experience under the SUTA dumping amendments?

**Answer:** Unemployment experience may not be transferred, and a new employer rate or the state's standard rate will instead be assigned, when a person who is not an employer acquires the trade or business of an existing employer. However, this prohibition applies only if the UC agency finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. (The identification of a state's standard rate is explained in UIPL 15-84.)

**17. Question:** Provide an example of when experience may not be transferred under the amendments.

**Answer:** The amendment prohibiting transfers is intended to address situations where a person, who is *not* an employer, purchases a small business solely or primarily for the purpose of obtaining its low rate of contributions when it commences its new business. Generally, the small business is converted to a different type of business.

For example, Person A is not an employer. Person A purchases a flower shop, which has earned the minimum UC rate of .5 percent to begin a manufacturing business. Person A either stops the flower business, or it becomes incidental as non-flower-shop payroll overwhelms it. Had Person A not purchased the flower shop, it would have been assigned a new employer rate of 4.5 percent based on its non-flower shop industry. The facts here should lead the state UC agency to conclude that the purchase was primarily for the purpose of obtaining a lower rate of contributions. Thus, under the amendments, state laws may not permit the experience of the flower shop to be transferred to Person A. Instead, Person A will be assigned the applicable new employer rate (or the state's standard rate) until such time as Person A qualifies for a rate based on experience.

**18. Question:** How will a state determine if the acquisition of an employer was made "solely or primarily for the purpose of obtaining a lower rate of contributions?"

**Answer:** The state should "use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition." (The quoted language is from the Draft Legislative Language in Attachment II.) The cost of acquiring a business may be used as an objective factor because this cost, as compared with any potential savings in contributions costs, will indicate the extent to which UC tax savings may accrue.

State law may not arbitrarily limit the criteria to be used. For example, some state laws currently consider only whether the business enterprise of the acquired business is continued. This limitation would allow an impermissible SUTA dump to occur as it does not address situations where the purchaser continues the acquired business while flooding the business (and the experience account) with a substantial number of employees performing duties unrelated to the acquired business. For this reason, the draft legislative language is written to refer to "objective factors *which include*" those listed. (Emphasis added.)

**REQUIRED PENALTIES – SECTION 303(k)(1)(D), SSA**

**19. Question:** What penalties must be imposed under state law?

**Answer:** State law must provide that "meaningful civil and criminal penalties" are imposed with respect to—

- Persons who "knowingly violate or attempt to violate" those provisions of the state's UC law that implement Section 303(k), SSA.
- Persons who "knowingly advise another person to violate those provisions of" state UC laws that implement Section 303(k), SSA.

"Knowingly" is defined as "having actual knowledge of *or* acting with deliberate ignorance of *or* reckless disregard for the prohibition involved." (Emphasis added. Section 303(k)(2)(E), SSA.)

**20. Question:** Must penalties be imposed in every case of SUTA dumping that is identified?

**Answer:** No. The penalties only apply to persons who "knowingly violate or attempt to violate" the SUTA dumping provisions of state law.

However, when a determination issued by the appropriate authority or a consent order establishes that a person "knowingly" violated (or attempted to violate) a state's SUTA dumping provisions, then civil penalties must be imposed. States will take into account the amounts at issue and the likelihood of successful prosecution in determining which cases will result in criminal prosecutions.

In cases where a SUTA dumping investigation results in a settlement between the state and the employer in which the employer admits no wrongdoing, there has been no clear establishment of SUTA dumping. In such cases, Federal law does not require the imposition of a penalty.

**21. Question:** What is a "meaningful" penalty?

**Answer:** To be "meaningful," the penalty must have the effect of curtailing SUTA dumping. Minimal penalties will not accomplish this end.

Concerning cases where only civil penalties are imposed, a monetary penalty must be of sufficient size that an employer will not be tempted to SUTA dump. A flat fine against SUTA dumping may not be a meaningful deterrent. For example, if a corporation that attempted to dump $2 million in SUTA taxes is fined $5,000, this will likely not be a meaningful deterrent against future attempts to SUTA dump. For that reason, the draft legislative language attached to this UIPL takes the approach that an employer who violated (or attempted to violate) the SUTA dumping prohibitions be assessed the maximum tax rate, or, if assigning the maximum rate does not result in a rate increase of at least 2% of taxable wages, then a penalty rate of 2% of taxable wages will instead be assessed for the rate year in which the violation occurred (or was attempted) and the following three years. States are free to vary this penalty (including assessing both rate increases and fines) but any penalty must have significant financial impact to have a deterrent effect.

**22. Question:** May state law limit the civil penalties to rate increases?

**Answer:** No. UC rate increases are not applicable to self-employed individuals who knowingly advise employers to SUTA dump. As a result, state law also needs to provide for fines against individuals. The draft legislative language attached to this UIPL takes the approach that rate increases will be applied to employers and fines to non-employers.

**23. Question:** Do the SUTA dumping amendments specify the uses of any financial penalties collected by the UC agency?

**Answer:** No. The draft legislative language attached to this UIPL operates on the assumption that, as is the case with any other UC contributions payable under a state's UC law, any amounts paid due to any rate increase will be deposited in the state's unemployment fund in which case they may be withdrawn *only* for the payment of benefits. Also, under the draft legislative language, any fines will be deposited in the state's penalty and interest account. States may limit the use of these fines to SUTA dumping and other integrity activities.

## PAYROLLING

**24. Question:** Do the SUTA dumping amendments address situations where one employer reports its payroll under another employer's account?

**Answer: No.** Although this practice, commonly called "payrolling," has been known for some time, it is not addressed by the amendments. "Payrolling" may also include cases where two unrelated businesses negotiate for a fee to have all or part of the employer with the higher UC rate report its payroll as belonging to the other employer. A PEO was recently found to be "payrolling" by shifting *its* payroll to the account of a client with a lower rate. In each case, the employers are fraudulently reporting who is the employer of an individual.

Unlike the manipulations the SUTA dumping amendments are designed to prevent, "payrolling" should already be explicitly prohibited under all states' UC laws since it involves an employer submitting fraudulent documents concerning who is an individual's employer for UC purposes.

Recognizing that "payrolling" has the same effect as SUTA dumping, the Draft Legislative Language is written so that its penalties will apply to "payrollers." It provides that the penalties apply not just to the mandatory and prohibited transfers required by new Section 303(k), SSA, but also to violations or attempted violations of "any other provision of this Chapter related to determining the assignment of a contribution rate."

## ESTABLISHING PROCEDURES – SECTION 303(k)(1)(E), SSA

**25. Question:** What must my state law say regarding establishing procedures to detect SUTA dumping?

**Answer:** The state law must say that the state will establish procedures to "identify the transfer or acquisition of a business for purposes of" detecting SUTA dumping. (Section 303(k)(1)(E), SSA.) The state law is not required to specify the procedures. The Department does not believe that it is desirable to legislate what these procedures *must* be as the most effective procedures may vary over time. As a result, the Draft Language does not specify procedures. However, the state must implement procedures to detect SUTA dumping.

## OTHER

**26. Question:** What does "person" mean for purposes of the amendments?

**Answer:** "Person" has "the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986." (Section 303(k)(2)(F), SSA.) Section 7701(a)(1), IRC, defines "person" as meaning "an individual, a trust, estate, partnership, association, company or corporation." Thus, the term "person" is very broad; it includes entities that may be employers under state law and it includes individuals who are not employers.

**27. Question:** What does "employer" mean for purposes of the amendments?

**Answer:** "Employer" means "an employer as defined under state law." (Section 303(k)(2)(B), SSA.) Typically, "employer" will mean an entity that pays sufficient wages based on employment to be subject to the state's UC law. If state UC law does not use the term "employer," then, for purposes of determining what entity is an employer, the state should use whatever term it uses to describe this entity. For example, many states use the term "employing unit" to describe this entity.

**28. Question:** What does "business" mean for purposes of the amendments?

**Answer:** "Business" means "a trade or business (or a part thereof)." (Section 303(k)(2)(c), SSA.)

**EFFECTIVE DATE**

**29. Question:** By what date must the states amend their UC laws?

**Answer:** The amendments do not specify a date. Instead, they apply to "rate years beginning after the end of the 26-week period beginning on the first day of the first regularly scheduled session of the State legislature beginning on or after the date of the enactment" of P.L. 108-295, which was August 9, 2004. (See Section 2(c) of P.L. 108-295.) Thus, transfers of experience required or prohibited under the amendments must be effective for such rate years. Nothing prohibits states from providing for earlier effective dates. Indeed, states are encouraged to make their amendments effective as soon as possible.

All states currently have rate years beginning either January 1 or July 1. Also, almost all states' first legislative sessions following the date of enactment will begin in the first three months of 2005. As a result, after taking into account the 26-week grace period, the amendments in most states must be effective for rate years beginning on or after January 1, 2006, or on or after July 1, 2006, whichever is applicable in the state.

For purposes of determining when the 26-week period ends, the state should start counting on the first day of the first regularly scheduled session of the state legislature and count up to 182 (26 weeks x 7 days = 182 days). Any rate year beginning after the 182nd day must apply the SUTA dumping amendments.

The following table indicates the required effective dates:

| EFFECTIVE DATES | | |
|---|---|---|
| **First Day of State's First Regularly Scheduled Session** | **State's Rate Year Begins** | **Effective for Rate Years Beginning** |
| **January 1 – July 3, 2005** | January 1 | January 1, 2006 |
| | July 1 | July 1, 2006 |
| **July 4 – December 31, 2005** | January 1 | January 1, 2007 |
| | July 1 | July 1, 2006 |
| **January 1 – July 3, 2006** | January 1 | January 1, 2007 |
| | July 1 | July 1, 2007 |

**30. Question:** The state's legislature has adjourned. However, it is scheduled to meet in a one-day session that is limited to over-riding vetoes. This one-day session is consistently scheduled to occur a specified number of days after the state legislature has adjourned. Although the legislature adjourned prior to the date of enactment of P.L. 108-295, the one-day session occurs after the date of enactment. Does this veto session count as the "first day of the first regularly scheduled session" following enactment?

**Answer:** No. The effective date provisions recognize that states need time to amend their laws. A legislative session where the introduction and enactment of *new* legislation is prohibited will, therefore, not be considered as starting the clock for purposes of determining when rates must be assigned consistent with new Section 303(k), SSA. If, on the other hand, legislation may be introduced and enacted in such a one-day session, the clock will start.